DEPARTMENT OF STATE REVENUE

04-20130697.LOF

Letter of Findings Number: 04-20130697
Use Tax
For Tax Years 2010-2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Use Tax–Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-4-10; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of use tax on its rental of equipment from its related entity.

STATEMENT OF FACTS

Taxpayer is an Indiana business. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer's business records. As a result of the audit, the Department determined that Taxpayer owed additional use tax for the 2010, 2011, and 2012 tax years. The Department found that Taxpayer had made purchases on which sales tax was not paid at the time of purchase nor was use tax remitted to the Department, and issued proposed assessments for the additional use tax and interest due for the purchases. Taxpayer protests the imposition of use tax on its rental of equipment from its related entity. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as necessary.

I. Use Tax–Imposition.

DISCUSSION

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). In general, all purchases of tangible personal property are subject to sales and/or use tax. An exemption from use tax is granted for transactions where sales tax was paid at the time of the purchase pursuant to IC § 6-2.5-3-4. In certain circumstances, additional enumerated exemptions from sales and/or use tax are available.

The Department found that Taxpayer made purchases without paying sales tax at the time of purchases, and assessed use tax on the purchases. Taxpayer protests the assessment of use tax on its equipment rental purchases from its related entity.

The Department refers to IC § 6-2.5-4-10(a), which provides:

> A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person other than for subrent or sublease.

Since Taxpayer rents the equipment from its related entity, Taxpayer is involved in a retail transaction as defined by IC § 6-2.5-4-10(a). Since Taxpayer did not pay sales tax at time of the rental purchases, the use tax is imposed on Taxpayer's storage, use, or consumption of the tangible personal property in Indiana pursuant to IC § 6-2.5-3-2(a).

Taxpayer asserts that pursuant to direction it received during a prior audit, it did not pay sales or use tax on the rental of the equipment. However, a review of the prior audit does not reveal this to be the case. In fact, the prior audit, on page 11 of the audit report, determined that all of Taxpayer's equipment and truck rental purchase transactions that it records in the expense account (521000), which is the account in which Taxpayer records the equipment rental transactions in question, were taxable transactions.

Taxpayer also invites the Department to lower the use tax assessment making an argument based on equity. Taxpayer claims that since its related entity paid tax at the time of the related entity's purchase of the equipment and the related entity did not request a refund of this tax from the Department, Taxpayer should get credit for these amounts paid by its related entity against the use tax due on the rental transactions. However, Taxpayer forgets that Taxpayer and its related entity are two separate distinct taxpayers. Whether Taxpayer's related entity was responsible for the sales on its original purchase of equipment or could have filed a refund claim due to an exemption is irrelevant to and beyond the scope of Taxpayer's protest for Taxpayer's use tax liabilities for the subsequent rental transactions in question. Additionally, Taxpayer has not cited to any statutes, regulations, or case law that would allow the Department to make such an adjustment. Thus, the Department declines Taxpayer's invitation.

Therefore, Taxpayer has not established that the proposed assessments are wrong, and has not met the burden imposed under IC § 6-8.1-5-1(c). Based upon the information available, the Department finds that the audit's determination that use tax is due on Taxpayer's rental of equipment from its related entity was proper.

FINDING

Taxpayer's protest of the assessment of use tax on its equipment rentals is denied.

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